

FEB 02 2018

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JAMES N. HATTEN, Clerk
By:  Deputy Clerk

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|---------------------------------|---|----------------------------|
| In re: Equifax, Inc. Customer |) | MDL Docket No. 2800 |
| Data Security Breach Litigation |) | Case No.: 1:17-md-2800-TWT |
| |) | CONSUMER ACTIONS |
| |) | |

**APPLICATION FOR APPOINTMENT OF GARDY & NOTIS, LLP
AS A MEMBER OF THE STEERING COMMITTEE FOR THE
CONSUMER PLAINTIFF CLASS**

By this application, Gardy & Notis, LLP (“GN”) applies to serve on the Steering Committee for the consumer class in the above-captioned litigation.

GN is a nationwide plaintiff's rights and class action law firm representing consumers, shareholders, and employees who have been victimized by deceptive, unlawful or unscrupulous corporate practices. GN was among the earliest to file a class action against Equifax and represents seven plaintiffs from five states in three class actions that were filed in New York, Massachusetts, and California and have been transferred to this Court. After filing those cases, GN's cases received press coverage and GN has since communicated with dozens of Equifax victims who called seeking information about the data breach and how they can protect themselves in the wake of the data breach. GN has also created an informational website, www.equifaxdatabreach.org, which contains general information about the data breach and through which class members can contact GN to share their story.

GN's attorneys have decades of experience, during which time they have recovered hundreds of millions of dollars for classes who were harmed by unscrupulous practices and have devoted substantial resources and time in the prosecution of these claims. For the reasons that follow, GN should be appointed to the Steering Committee for the consumer actions.

A. Background

On September 7, 2017, Equifax, Inc. announced that it had suffered a data breach that resulted in a third party obtaining the names, birth dates, *Social Security numbers*, addresses and some driver's license numbers and credit card numbers, of more than 140 million consumers which is over 43% of the United States' estimated population.

Although Equifax learned of the data breach on or about July 29, 2017, it did not notify the public of the breach until September 7. As a result, consumers remained unaware that their sensitive information was compromised and were unable to take any actions to protect themselves for over a month. According to many security experts, the time period immediately following a data breach is the most opportune time for thieves to exploit the information they have obtained because the victim is unaware that anything has occurred.

On the same night that Equifax disclosed the data breach, GN was contacted and retained by Josh Grossberg, a resident of New York City, whose personal and

sensitive information is believed to have been compromised in the data breach. Plaintiff Josh Grossberg suffered harm in at least two ways: First, an unauthorized Verizon cell phone account had been opened in his name in or about August, 2017 and a balance of \$1,266.66 was outstanding on that account. Second, as a direct result of and in response to the data breach, Plaintiff Josh Grossberg paid to purchase credit monitoring services to protect himself as a result of the data breach.

GN filed its complaint the next day with Plaintiff Grossberg and an additional Plaintiff, Lisa Olivo. *See Grossberg v. Equifax Inc.*, No. 17-cv-5280-JBW-LB (E.D.N.Y.). On the same day, September 8, 2017, the New York Post and Fox News ran coverage of the case the case and interviewed Orin Kurtz of GN.¹

This press coverage resulted in a flood of contacts to GN from potential class members who were seeking information about the data breach, the litigation, and their options concerning how to protect themselves, among other things. GN spoke to each class member and provided information, to the extent possible, in response to their questions.

GN subsequently set up a website, www.equifaxdatabreach.org, which gathered informational articles about the data breach and had updates concerning the

¹ The firm anticipates that Mr. Kurtz, one of its partners, will be the primary lawyer involved if GN is appointed to the Steering Committee.

litigation arising out of the data breach. This website also had a section where class members could tell GN about their experiences to aid in GN's investigation of the claims against Equifax. GN received dozens of contacts from Class members.

On September 13, 2017, GN filed an action in the District of Massachusetts on behalf of Plaintiff Kaethe Skye, and also filed an action in the Central District of California on behalf of Plaintiff Ondrea Faillace. *See Skye v. Equifax Inc.*, No. 1:17-cv-11742-RGS (D. Mass.); *Faillace v. Equifax Inc.*, No. 2:17-cv-06721-SJO-PJW (C.D. Cal.). All of GN's cases were subsequently transferred to this Court by the JPML.

B. GN Should Be Appointed to the Steering Committee for the Consumer Cases

1. GN's Experience in Class Action Litigation

GN has a track record of success in class actions, spanning over decades, and is well qualified to contribute to this action. The lawyers at GN have obtained substantial settlements in securities class actions including *In re BankAmerica Corp. Securities Litigation* (E.D. Mo.) (\$490 million recovery), *In re Adelphia Communications Corporation Securities and Derivative Litigation* (S.D.N.Y.) (\$455 million recovery), *In re Waste Management Inc., Securities Litigation* (N.D. Ill.) (\$220 million recovery), and *In re UnitedHealth Group Incorporated Derivative Litigation* (D. Minn.) (\$930 million recovery).

GN has also obtained settlements on behalf of consumers, most recently in *Orlander v. Staples, Inc.*, No. 1:13-cv-0703-NRB (S.D.N.Y.) (\$3,950,000 settlement on behalf of purchasers of extended service plans for electronics); *In re Apple iPhone4 Products Litigation* (N.D. Cal.) (Gardy & Notis served as co-lead counsel to a class of consumers owning more than 25 million iPhone 4s; settlement provided both cash and injunctive relief for consumers, including a free case program); and *Opperman et al. v. Kong Technologies, Inc. et al.* (N.D. Cal.) (Gardy & Notis serves on the Plaintiffs' steering committee in privacy action on behalf of owners of iPhones, iPods and iPads against Apple; \$5.3 million settlement that resolves some claims has been preliminarily approved by the Court). GN is also one of the counsel on a large, currently-pending multidistrict litigation arising out of the massive consumer fraud allegedly perpetrated by the telecommunications company CenturyLink against its own customers. See *In Re: CenturyLink Residential Customer Billing Disputes Litigation*, No. 0:17-md-02795-MJD-KMM (D. Minn).

In addition, GN represents employees in class and collective actions under the Fair Labor Standards Act (*Yuen v. Nielsen*, No. 14-013935 (Broward C'nty, Florida) (\$5,000,000 aggregate FLSA settlement)), the New York Labor Law (*Leahy v. Retriever Medical/Dental Payments, Inc.*, No. 51975/2017 (N.Y. Sup. Ct.) (appointed as class counsel in action for misclassification as independent contractors) and the Employee Retirement Income Security Act (*In re: G.E. ERISA*

Litigation, No. 1:17-cv-12123-DJC (D. Mass.) (case pending, GN is one of three co-lead counsel).

GN's firm resume is attached to this application as Exhibit A.

2. GN's Commitment to the Equifax Litigation

If appointed to the Steering Committee, GN intends to work cooperatively with all other appointed counsel, and to spend all time necessary to prosecute the action. As an experienced class action firm, GN is fully aware of the requirement to work harmoniously with other counsel, and it has a track record of doing so in the litigations listed above. GN has and is willing to commit the resources necessary to this case in the same manner it has done in previous class actions.

CONCLUSION

GN has a proven track record of success in class actions, and is willing and able to devote the time and resources necessary to prosecute this action. Accordingly, Gardy & Notis, LLP respectfully requests that it be appointed to the Steering Committee for the consumer actions.

DATED: February 1, 2018

GARDY & NOTIS, LLP

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Faillace*

EXHIBIT A

GARDY & NOTIS, LLP
FIRM RESUME

Gardy & Notis, LLP, is a boutique law firm dedicated to representing shareholders in securities class actions, derivative actions, mergers and acquisitions, consumer class actions, and employment class actions. The attorneys at Gardy & Notis, LLP have served as plaintiffs' lead counsel in some of the largest securities class actions and shareholder derivative action recoveries, including *In re BankAmerica Corp. Securities Litigation* (\$490 million recovery), *In re Adelphia Communications Corporation Securities and Derivative Litigation* (\$455 million recovery), *In re Waste Management Inc., Securities Litigation* (\$220 million recovery), and *In re UnitedHealth Group Incorporated Derivative Litigation* (\$930 million recovery).

The attorneys at Gardy & Notis, LLP have represented shareholders as lead counsel, co-lead counsel, or played a significant role in numerous high-profile cases in state and federal courts across the country. The firm's representative matters and the biographies of the firm's professionals are set forth below.

Among the more prominent of the securities fraud class actions litigated by the firm's attorneys are:

- *In re BankAmerica Corp. Securities Litigation* (E.D. Mo.) (\$490 million recovery);
- *In re Adelphia Communications Corporation Securities and Derivative Litigation* (S.D.N.Y.) (\$455 million recovery);
- *In re Waste Management, Inc. Securities Litigation* (N.D. Ill.) (\$220 million recovery);
- *Hirsch v. PSS World Medical, Inc.* (M.D. Fl.) (\$16.5 million recovery);
- *Cheney v. Cyberguard Corp.* (S.D. Fla.) (\$10 million recovery); and
- *In re Adaptive Broadband Securities Litigation* (N.D. Cal.) (\$8.2125 million recovery).

The attorneys at Gardy & Notis, LLP also have extensive experience in litigating corporate governance, derivative, bondholder and M&A transactional cases. Our reputation for excellence and creativity in the area of director liability for breach of fiduciary duty and corporate governance are demonstrated by cases such as:

- *In Re Primedia, Inc. Stockholder Litigation* (Del. Ch.) (\$39 million recovery, representing a per-share recovery of approximately \$2.35 per share, or 33% more than the \$7.10 per share price accepted by the board of directors);
- *In re UnitedHealth Group Incorporated Derivative Litigation* (D. Minn.) (\$930 million recovery for stock options backdating);
- *FIC, L.P. v. Bear Stearns Asset Management Inc.* (S.D.N.Y.) (\$18.148 million recovery for hedge fund investors);
- *Danner v. Caesars Entertainment Corporation* (S.D.N.Y.) (up to \$34.5 million recovery for bondholders alleging indenture amendment violated contract terms and the Trust Indenture Act of 1939)
- *In re Orchard Enterprises, Stockholder Litigation* (Del. Ch.) (\$10.75 million recovery to stockholders, representing a 95% increase over the price accepted by the board of directors);
- *In re The Student Loan Corporation Litigation* (Del. Ch.) (\$10 million increase in purchase price, representing an 8.3% increase over the price accepted by the board of directors);
- *Kahn v. Buttner (Value Line, Inc. Derivative Litigation)* (N.Y. Sup. Ct.) (\$2.9 million recovery to public minority shareholders, representing 85% of maximum potential damages, and a 20% increase over the common stock market price);
- *Kahn v. Falcone, et al. (Harbinger Group, Inc.)* (Del. Ch.) (\$3.75 million recovery to public minority shareholders).
- *In re Aramark Corporation Shareholders Litigation* (Del. Ch.) (\$222 million increase in purchase price, and management voting control reduced from 37% to 3.5%);

- *Rice v. Lafarge North America Inc.* (Md. Cir.) (\$353 million increase in purchase price);
- *Lang v. The Reader's Digest Association, Inc.* (Del. Ch.) (\$21 million increase to shareholders in recapitalization);
- *In re Travelers Property Casualty Corp. Securities Litigation* (Del. Ch.) (\$25.7 million increase in purchase price);
- *In re SFX Entertainment Inc. Securities Litigation* (Del. Ch.) (\$34.5 million increase in purchase price); and
- *In re Sauer-Danfoss, Inc. Stockholder Litigation* (Del. Ch.) (\$10 million recovery to public minority shareholders).

Gardy & Notis also prosecutes cases across the entire spectrum of consumer rights, consumer fraud, and consumer protection issues. The firm's ability to lead and zealously represent consumers is demonstrated in cases such as:

- *In re Apple iPhone4 Products Litigation* (N.D. Cal.) (Gardy & Notis served as co-lead counsel to a class of consumers owning more than 25 million iPhone 4s based on the product's design flaw. This action alleged violations of the CLRA, UCL, FAL and breach of warranty. The litigation resulted in a settlement that provided both cash and injunctive relief for consumers, including a free case program.); and
- *Marc Opperman et al. v. Kong Technologies, Inc. et al.* (N.D. Cal.) (Gardy & Notis serves on the Plaintiffs' steering committee in an action on behalf of owners of iPhones, iPods and iPads against Apple for false and deceptive assurances to consumers of security and privacy in the personal data they stored on those devices and against various applications, such as Twitter and Instagram for accessing users' data without consent. A \$5.3 million settlement that resolves the claims as to the application developers has been preliminarily approved by the Court).

The attorneys at Gardy & Notis, LLP have decades of litigation experience and are committed to litigating with the highest level of excellence and integrity and to protecting victims of corporate wrongdoing:

MARK C. GARDY

Mr. Gardy received his B.A. from Rutgers University in 1981 where he graduated Phi Beta Kappa, with high honors. He received his J.D., *cum laude*, from New York Law School in 1984. Mr. Gardy is admitted to the Bar of the State of New York, the State of New Jersey and the United States District Courts for the Southern and Eastern Districts of New York and the District of New Jersey.

Mr. Gardy has served on panels for the Council of Institutional Investors and on a panel on D&O Liability Insurance for the American Conference Institute. He has been featured on CNBC's *Squawk Box* and in *The New York Times*. Mr. Gardy was also listed as a New Jersey Super Lawyer in 2008, 2009, 2010, 2011, 2012, 2013, and 2014.

Prior to forming Gardy & Notis, LLP, Mr. Gardy was a named partner in the law firm Abbey Gardy, LLP.

JAMES S. NOTIS

Mr. Notis received his B.A. from Brandeis University in 1991, and his J.D. from Benjamin N. Cardozo School of Law in 1994. Mr. Notis is admitted to the Bar of the State of New York, the State of New Jersey, the United States District Courts for the Southern and Eastern Districts of New York and the District of New Jersey, and the United States Court of Appeals for the Second Circuit and the Third Circuit.

Mr. Notis has served as a panelist for the Practicing Law Institute for Securities Litigation and Enforcement.

Prior to forming Gardy & Notis, LLP, Mr. Notis was a partner in the law firm Abbey Gardy, LLP.

JENNIFER SARNELLI

Ms. Sarnelli received her B.A. from The American University in 1996, and her J.D. from Seton Hall University School of Law in 2002, where she was a comments editor for the *Seton Hall Law Review*. Ms. Sarnelli is admitted to the Bars of the State of New York, the State of New Jersey, the State of California, the District of Columbia, the United States District Courts for the Southern and Eastern Districts of New York, District of New Jersey and the Northern, Southern and Central Districts of California, the United States Court of Appeals for the Ninth Circuit, and the United States Supreme Court.

MEAGAN A. FARMER

Ms. Farmer received her B.A. from Eastern Illinois University in 1993, and her J.D., *cum laude*, from New York Law School in 2003, where she served as Editor-in-Chief of the *New York Law School Law Review*. Ms. Farmer is admitted to the Bar of the State of New York and the United States District Courts for the Southern and Eastern Districts of New York, and the United States Court of Appeals for the Second Circuit.

ORIN KURTZ

Mr. Kurtz received his B.S. from the State University of New York, New Paltz, in 1998, and his J.D., *magna cum laude*, from New York Law School, where he served as an Executive Articles Editor on the *New York Law School Law Review*.

Mr. Kurtz is responsible for the firm's employment division, and practices before federal and state courts on behalf of employees in class and collective actions under the Fair Labor Standards Act and the labor laws of various states.

Mr. Kurtz is a frequent speaker at national employment law conferences, including the American Bar Association Employment Rights & Responsibilities Committee Midwinter Meetings, the 2016 National CLE Conference in Vail, Colorado, Marino CLE, and Lawline CLE.

Mr. Kurtz is an author of the American Bar Association Review of Consumer Protection Law Developments for the years 2010, 2013, and 2015, and is a regional editor of the American Bar Association Employment At Will Treatise.